

**04-40153**

AO 241 (Rev. 5/85)

PETITION UNDER 28 USC § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

<b>United States District Court</b>		District <b>Worcester County</b>
Name <b>Robert Hendrickson</b>	Prisoner No. <b>W-49459</b>	Case No. <b>15 P: 16</b>
Place of Confinement  <b>Gardner State Prison, P.O. Box 466, Gardner, Ma. 01440</b>		
Name of Petitioner (include name under which convicted)  <b>Robert Hendrickson</b>		Name of Respondent (authorized person having custody of petitioner)  <b>Commonwealth of Massachusetts</b>
The Attorney General of the State of: <b>Scott Harshbarger</b>		

**PETITION**

- Name and location of court which entered the judgment of conviction under attack Worcester Superior Court, 2 Main St., Worcester, Ma. 01608
- Date of judgment of conviction November 26, 1990
- Length of sentence 16 to 20 years
- Nature of offense involved (all counts) Aggravated rape, indecent assault & battery and kidnapping.
- What was your plea? (Check one)
  - (a) Not guilty ☐
  - (b) Guilty ☒
  - (c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:  
I pleaded not guilty to all counts, while pleading guilty (transcripts for plea hearing.)
- If you pleaded not guilty, what kind of trial did you have? (Check one)
  - (a) Jury ☐
  - (b) Judge only ☐
- Did you testify at the trial?  
Yes ☐ No ☒
- Did you appeal from the judgment of conviction?  
Yes ☒ No ☐

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9. If you did appeal, answer the following:

- (a) Name of court Massachusetts Appeals Court
- (b) Result Denied
- (c) Date of result and citation, if known December 15, 2003, under Rule 30(C)
- (d) Grounds raised Violation of Court Rules and Regulations, putting two unrelated cases together in one Conference report withholding exculpatory, no hearing.

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

- (1) Name of court Supreme Judicial Court of Massachusetts
- (2) Result Denied without a hearing for the forth time of appeals. I have never had an evidentiary hearing within this case, since 1990.
- (3) Date of result and citation, if known On or about May of 2004, citation unknown.
- (4) Grounds raised same as above, two unrelated cases put together in one pretrial conference report, withholding evidence, violations of Court rules & regulations.

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

- (1) Name of court \_\_\_\_\_
- (2) Result \_\_\_\_\_
- (3) Date of result and citation, if known \_\_\_\_\_
- (4) Grounds raised \_\_\_\_\_

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?  
Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court Worcester Superior Court
- (2) Nature of proceeding Correction of sentence, sentence (A) is a 12-20 year sentence and followed by a 4 $\frac{1}{2}$  from & after, the D.O.C., put a warrant on this.
- (3) Grounds raised I was properly surrendered by the probation dept., while being sentenced in another case and since the Judge stated to the clerk, " All

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sentences are to be served concurrently with the sentences previously  
imposed this day." (transcript of plea hearing) which wipes out any from &  
after sentence and warrants.

(4) Did you receive an evidentiary hearing on your petition, application or motion?  
 Yes ☐ No ☒

(5) Result Denied

(6) Date of result July 29, 04

(b) As to any second petition, application or motion give the same information:

(1) Name of court Worcester Superior Court

(2) Nature of proceeding same as above, sentence correction, now put under a  
writ of habeas corpus.

(3) Grounds raised The Department of Corrections changed my sentence, changed the  
name on the indictment from assault w/intent to rob or murder to "Armed  
assault w/intent to rob or murder" with a warrant on my from and after  
which kept me from receiving a parole.

(4) Did you receive an evidentiary hearing on your petition, application or motion?  
 Yes ☐ No ☐

(5) Result unknown

(6) Date of result \_\_\_\_\_

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☒ changed name of motion from rule 30(A) to

(2) Second petition, etc. Yes ☐ No ☐ Writ of Habeas Corpus.

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

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For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: conviction obtained by the unconstitutional failure of the prosecution & C.P.C.S., attorney to disclose evidence favorable to the defendant, Brady Rule.

Supporting FACTS (state *briefly* without citing cases or law) Putting two unrelated cases together not knowing in the pretrial conference report what evidence belonged to which case, mixing indictment numbers to make it seem as one case, violating Mass.R. Crim.P., to make conviction, no attendance of the defendant at the conference report hearing, no agreements were ever written down in the conference report on the time told by the defendant's attorney and given more time than what was told by the defendant's attorney, that was the reason for the plea, less time.

B. Ground two: Denial of effective assistance of counsel, prosecutorial misconduct under the brady rule, and refusing an evidentiary hearing since 1990.

Supporting FACTS (state *briefly* without citing cases or law): counsel never spoke to the defendant about this case only that "counsellor repeatedly said he received no exculpatory evidence from the district attorney". told the defendant if he pleaded guilty he would receive a 10-12 year sentence, less than the sentence he received at trial, 12-20. he received a 16-20 year sentence with no statutory good time attorney refused to argue or explain anything to the defendant, and that was the reason for the plea of guilty was to do less time.

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(c) At trial none, guilty plea(d) At sentencing 16-20 year sentence(e) On appeal Massachusetts Appeals Court(f) In any post-conviction proceeding Supreme Judicial Court State of Massachusetts(g) On appeal from any adverse ruling in a post-conviction proceeding on appeal from the Supreme  
Judicial Court to the 1st District Court of the United States this date.  
Aug. 10 04

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: \_\_\_\_\_

(b) Give date and length of the above sentence: \_\_\_\_\_

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☒

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

August 10, 2004

(date)

Robert Henrichson  
Signature of Petitioner

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(If petitioner is attacking a judgment which imposed a sentence to be served in the future, petitioner must fill in the name of the state where the judgment was entered. If petitioner has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion under 28 U.S.C. § 2255, in the federal court which entered the judgment.)

## PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

*Instructions—Read Carefully*

- (1) This petition must be legibly handwritten or typewritten, and signed by the petitioner under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.
- (2) Additional pages are not permitted except with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) Upon receipt of a fee of \$5 your petition will be filed if it is in proper order.
- (4) If you do not have the necessary funds for transcripts, counsel, appeal, and other costs connected with a motion of this type, you may request permission to proceed *in forma pauperis*, in which event you must execute form AO 240 or any other form required by the court, setting forth information establishing your inability to pay the costs. If you wish to proceed *in forma pauperis*, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution. If your personal account exceeds \$\_\_\_\_\_, you must pay the filing fee as required by the rules of the district court.
- (5) Only judgments entered by one court may be challenged in a single motion. If you seek to challenge judgments entered by different courts either in the same state or in different states, you must file separate petitions as to each court.
- (6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from any judgment of conviction.
- (7) When the petition is fully completed, the original and at least two copies must be mailed to the Clerk of the United States District Court whose address is \_\_\_\_\_.
- (8) Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

## CIVIL COVER SHEET 40153

JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I) PLAINTIFFS

Commonwealth of MASS.

1) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Worcester  
(EXCEPT IN U.S. PLAINTIFF CASES)

2) ATTORNEYS (FIRM NAME ADDRESS AND TELEPHONE NUMBER)

DISTRICT ATTORNEY WORCESTER SUPERIOR COURT  
2 MAIN ST WORCESTER, MASS. 01608

## DEFENDANTS

ROBERT HENDRICKSON  
COURT CLERK'S OFFICECOUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Worcester  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

ATTORNEYS (IF KNOWN)

PRO, SE

## BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)  
U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

## ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment ☒

## NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 6 Insurance <input type="checkbox"/> 7 Marine <input type="checkbox"/> 8 Miller Act <input type="checkbox"/> 9 Negotiable Instrument <input type="checkbox"/> 10 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 11 Medicare Act <input type="checkbox"/> 12 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 13 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 14 Stockholders' Suits <input type="checkbox"/> 15 Other Contract <input type="checkbox"/> 16 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 167 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 620 Copyrights <input type="checkbox"/> 630 Patent <input type="checkbox"/> 640 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 661 HRA (1395m) <input type="checkbox"/> 662 Black Lung (923) <input type="checkbox"/> 663 DRWC/DRAW (405(g)) <input type="checkbox"/> 664 SSIO Title XVI <input type="checkbox"/> 665 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 670 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 671 IRS - Third Party 28 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 610 Selective Service <input type="checkbox"/> 650 Securities/Commodities/Exchange <input type="checkbox"/> 675 Customer Challenge 12 USC 3410 <input type="checkbox"/> 681 Agricultural Acts <input type="checkbox"/> 682 Economic Stabilization Act <input type="checkbox"/> 683 Environmental Matters <input type="checkbox"/> 684 Energy Allocation Act <input type="checkbox"/> 685 Freedom of Information Act <input type="checkbox"/> 686 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 687 Constitutionality of State Statutes <input type="checkbox"/> 690 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 1 Land Condemnation <input type="checkbox"/> 2 Foreclosure <input type="checkbox"/> 3 Rent Lease & Ejectment <input type="checkbox"/> 4 Tort to Land <input type="checkbox"/> 5 Tort Product Liability <input type="checkbox"/> 6 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 446 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <b>HABEAS CORPUS:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	

## CAUSE OF ACTION

NOTE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE  
DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.

CONTINUED APPEAL FROM STATE COURTS, ALL HAVE BEEN EXHAUSTED. TWO UNRELATED CASES PUT TOGETHER IN ONE PRETRIAL CONFERENCE REPORT MIXING AND WITHHOLDING EVIDENCE VIOLATING COURT RULES AND REGULATIONS TO MAKE THIS CONVICTION WITHOUT A HEARING.

## REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐

## DEMAND \$

CHECK YES only if demanded in complaint  
JURY DEMAND: ☐ YES ☒ NOI. RELATED CASE(S) (See instructions):  
IF ANY

JUDGE

DOCKET NUMBER

SIGNATURE OF ATTORNEY OF RECORD

Robert Hendrickson PRO, SE. DATE: AUG. 10, 04

OFFICE USE ONLY

EXPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE